INFORMATION REGARDING REAFFIRMATION AGREEMENTS

What is a reaffirmation agreement?

A reaffirmation agreement is an agreement by which a debtor becomes legally obligated to pay all or a portion of an otherwise dischargeable debt. All reaffirmation agreements must be filed in compliance with 11 U.S.C. § 524 (*see* Form B240A), with Official Form B27 attached as a cover sheet. To be timely, such an agreement must be entered into prior to the date of discharge.

Reaffirmation agreements are strictly voluntary. They are not required by the Bankruptcy Code or other state or federal law. A debtor can voluntarily repay any debt instead of signing a reaffirmation agreement, but there may be valid reasons for wanting to reaffirm a particular debt.

Even if the debtor signs a reaffirmation agreement, the debtor has 60 days after the agreement is filed with the court (or the date of entry of discharge, whichever is later) to change his or her mind and rescind (cancel) the agreement. In either event, to rescind a reaffirmation agreement, the debtor must notify the creditor that the reaffirmation agreement is being rescinded. It is recommended that the debtor also file with the court a copy of any rescission letter. If the debtor reaffirms a debt, does not rescind the agreement, and fails to make the payments as agreed, the creditor can take action against the debtor to recover any property that was given as security for the debt, and the debtor may remain personally liable for any remaining debt after the collateral is sold.

Court Approval of Reaffirmation Agreements

Judge McGarity will not schedule a hearing on a reaffirmation agreement if:

- The reaffirmed debt is secured by real estate owned by the debtor.
- The creditor is a credit union and the debtor's attorney certified the agreement.
- The debtor's attorney certified the agreement and either (1) schedules I & J reflect a positive monthly net income or (2) the debtor's statement in support of the agreement sufficiently explains how payments under the agreement are to be made.

Judge McGarity will schedule a hearing on a reaffirmation agreement if one of the above conditions does not apply.

No action will be taken on a reaffirmation agreement that is (1) unsigned by either the debtor or creditor or (2) a lease of property.

Participation at the Hearing. The debtor who signed the agreement must attend this hearing and offer testimony to rebut the presumption of undue hardship. Generally, this will entail giving a detailed explanation of how he or she will be able to make the payments on the agreement. The debtor's attorney may attend the hearing, but is not required to. Likewise, the creditor will receive notice of the hearing, but is not required to participate.